

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Demetrius Raynard McIlwain,
Plaintiff,

vs.

Kershaw County Sheriff Department; Sheriff
Lee Boan; Agent Brad Lawson; Inv. Michael
Davidson,

Defendants.

Civil Action No. 3:20-cv-3665-CMC

ORDER

This matter is before the court on Plaintiff's Complaint filed October 19, 2020. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings.

On November 24, 2020, the Magistrate Judge issued a Report and Recommendation ("Report") recommending this matter be summarily dismissed without prejudice and without issuance and service of process for lack of subject matter jurisdiction. ECF No. 12. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. On December 2, 2020, Plaintiff filed a letter. ECF No. 14. In the letter, he notes he didn't receive the Report until December 1 due to the Thanksgiving holiday, and he noticed his § 1983 packet "was missing a lot of forms I needed to clearly outline my case." *Id.* at 1. He notes he therefore filed another lawsuit with a completed § 1983 packet, and requests the court accept his new case and dismiss this one. *Id.* If that is not possible, he seeks an extension to respond to the Report in this case and instructions on how to format objections.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

Plaintiff has now requested this case be dismissed, and the court has confirmed his “new § 1983 packet” has been filed as a new case at Civil Action No. 3:20-cv-04136. Accordingly, this matter is dismissed without prejudice and without issuance and service of process.¹

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
December 8, 2020

¹ Plaintiff’s motion for extension of time is therefore moot.